

COUNTY OF JAMES CITY, VIRGINIA

SILTATION AGREEMENT

THIS AGREEMENT, made this 9th day of JUNE, 20 09, by and between MONTICELLO WOODS ACTIVE ADULT, LLC, and all successors in interest, a corporation ("Developer"), and the County of James City, Virginia, ("County"), and SCOTT J. THOMAS, ("Agent") the County's Administrator of the Erosion and Sediment Control Ordinance.

WITNESSETH:

WHEREAS, Developer, desires approval of plans by the Agent for the County, for a project known as THE SETTLEMENT AT POWHATAN CREEK, PHASE 2, located at 4101 MONTICELLO AVENUE, WILLIAMSBURG, VA 23188, which plans include provision of siltation and erosion control measures as required by Chapter 8 of the Code of the County, and

WHEREAS, County desires to ensure the installation, maintenance and adequate performance of such control measures,

NOW THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and in further consideration of the approval of the aforesaid plans by the County and the issuance of permits for the work proposed to be done thereunder the parties hereto agree as follows:

1. Developer has either:

- a. deposited with Agent, and Agent by this execution hereof acknowledges that he holds, the sum of _____

dollars (\$_____) in escrow under and subject to the terms of this agreement, or;

- b. has furnished the County an irrevocable letter of credit or bond with corporate surety, whose terms and conditions are acceptable in substance and in form to the County Attorney, in the sum of ONE HUNDRED TWENTY-NINE THOUSAND AND NO/100 dollars (\$ 129,000.00), which letter of credit or bond is under and subject to the terms of this agreement.

The deposit, letter of credit or bond (collectively "Security Instrument") is designed to insure performance of the Developer's obligations and to insure reimbursement to the County in the event that it performs work or causes work to be performed pursuant to this Agreement and plans approved by and on file with the County.

2. In the event measures for the control of siltation and/or erosion as provided for on the plans referred to herein, or on any approved revision thereof, are not constructed at or prior to the occurrence of any rainstorm or other phenomena actually causing any siltation or erosion, County or its authorized agent shall have the right to enter upon Developer's property and construct such measures or do such other work as may be necessary to prevent further erosion or siltation, provided that County shall first give notice in writing to Developer or his superintendent of its intent so to do.

3. In the event measures for the control of siltation and/or erosion have been constructed, but fail, through overload and/or inadequate maintenance, to perform the function for which they were intended, County or its authorized agent, may in like manner to paragraph 2 above, enter to perform such reconstruction or maintenance as may be necessary to restore performance in accord with the plans, or approved revisions thereof, upon giving notice in writing to Developer or his superintendent of its intent so to do.

4. In the event there occurs siltation and/or erosion from the property covered by the plans referred to herein in sufficient quantity adversely to affect downstream drainage, or travel on any street, road, highway or other public way, then County may take such steps as may be necessary to restore functions to the affected drainage or travel way.

5. a. In the event County determines work shall be performed or causes to be performed work of any nature, including labor, use of equipment, and materials, under the provisions of paragraphs 2, 3 and 4 above, either by County staff, or other contractor, Agent shall draw and disburse to County on its order such sum or sums as may be requested, provided, however, that Agent's liability so to disburse shall be limited to the undistributed balance in its hands of:

1. the escrow amount, or
2. the letter of credit, or
3. the bond

Such surety may be drawn in total, if at the time the surety is to expire, if all improvements or any portion thereof are not complete and surety has not been adequately extended or replaced to ensure completion of the improvements. In addition, the County may draw a Security Instrument in the event it is not renewed or amended to remain in effect at least 10 days prior to its expiration. A notice that such draw has been made shall be delivered or mailed by County to Developer.

b. In the event the County calls, collects or otherwise draws on the Security Instrument pledged under this agreement, Developer agrees to either pay, or have the County use the proceeds of the draw to pay, a reasonable administrative fee of \$35.00 plus any costs actually incurred by the County in drawing on the Security

Instrument. The charge for an administrative fee plus costs shall apply regardless of whether the County later accepts a renewal or amendment of the Security Instrument.

6. In the event Agent makes disbursement pursuant hereto, Developer agrees to deposit within ten (10) days of such disbursement, an amount sufficient either:

- a. to restore escrow amount to its original balance as shown in paragraph 1; or
- b. to furnish an additional letter of credit in the amount of the draft; or
- c. to secure such additional bonds as to restore same to its original balance as shown in paragraph 1.

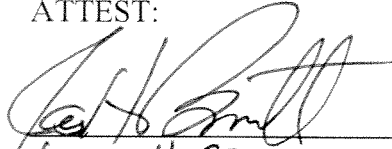
7. It is expressly agreed by all parties hereto that it is the purpose and intent of this Agreement to ensure the installation, maintenance, and performance of measures provided for on approved plans or revisions thereof, for the control of siltation and erosion, and for the restoration of function of facilities for drainage or vehicular travel if such facilities are adversely affected in their function by siltation or erosion from the property the subject of such plans. This Agreement shall not be deemed to create or affect any liability of any party hereto for any damage alleged to result from or be caused by erosion or siltation.

8. It is expressly agreed by the parties hereto that either:

- a. the escrow amount shall be held by Agent unless distributed in accordance with paragraph 5 above, or paid to County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by County, through its Agent, or
- b. the letter of credit or bond shall be held by Agent unless distributed in accordance with paragraph 5 above, or paid to County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by County, through its Agent.

IN WITNESS WHEREOF, the parties hereto, being first duly authorized, have affixed their signatures on the date first above written.

ATTEST:



JAMES H. BENNETT

Approved as to form:



Asst. County Attorney

Owner: C. LEWIS WALTRIP II (SEAL)
(Print Name and Title)

BY: GEORGE MANAGER
(Signature)

COUNTY OF JAMES CITY, VIRGINIA

BY: Andy Thum
County Agent

COUNTY OF JAMES CITY, VIRGINIA

EROSION AND SEDIMENTATION CONTROL BOND

Bond No. 8940633

KNOWN ALL MEN BY THESE PRESENTS: that we _____
Monticello Woods Active Adult, LLC _____, Principal, and
Fidelity and Deposit Company Company of Maryland _____, as Surety, are held
and firmly bound unto the County of James City, Virginia, Obligee, of the Commonwealth of
Virginia, in the Penal Sum of One Hundred Twenty Nine Thousand no/cents dollars,
for the payment hereof to the Obligee, the Principal binds its heirs, executors, administrators,
successors and assigns, and the Surety binds itself, its successors, and assigns severally and jointly
by their presents and to each hereby waive our homestead exemption as to this debt and obligation.

WHEREAS, the Principal desires to have approved by James City County, Virginia,
a certain erosion and sedimentation control plan pursuant to the terms of the Code of the County of
James City, Virginia, (and any amendment thereto) for a project known as _____
The Settlement at Powhatan Creek - Phase II _____,
located at 4101 Monticello Avenue _____, and in order to
have said plan approved, said Principal must have complied with all terms and provisions of said
code.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that
if the above Principal shall satisfactorily complete the erosion and sedimentation control measures
in accordance with the approved plan and Chapter 8 of the Code of the County of James City,
Erosion and Sedimentation Control, and shall fully indemnify and save harmless the Obligee from
all costs and damages which the Obligee may suffer by reason of the Principal's failure to do so, then
this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED FURTHER, that this is a continuous bond and the Surety hereby waives
notice of any extension hereunder granted by Obligee to Principal.

IN WITNESS WHEREOF, the Principal and the Surety have caused their respective
names to be hereunto subscribed and their seals to be hereunto affixed, this 8th day of June
20 09, duly authorized.

(Impress Corporate Seal here
if applicable)

ATTEST:

By _____

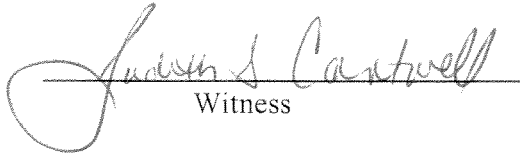
Principal: Monticello Woods Active Adult, LLC

By: _____

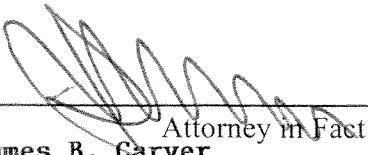
Title: Manager

(Impress Surety's Seal here)

Surety: Fidelity and Deposit Company of MD



Witness

By 

Attorney in Fact
James B. Carver

W.T. Chapin, Inc.
9317 Warwick Blvd.
Newport News, VA 23601
Names & Address of Virginia Resident Agent

1400 American Lane
Schaumburg, IL 60196
Address of Home Office

POWER OF ATTORNEY MUST BE ATTACHED

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

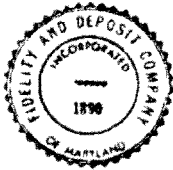
KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Robert G. FRY, III, S. E. WADDILL, III, Carlton L. GILL, JR., Judith S. CANTWELL, R. Gilliam FRY, IV, James B. CARVER, Donna M. SUTTON and Laura L. SWEIGART, all of Newport News, Virginia,** EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds and undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Robert G. FRY, III, S. E. WADDILL, III, Paige T. LILLEY, Carlton L. GILL, JR., Judith S. CANTWELL, R. Gilliam FRY, IV, James B. CARVER, Donna M. SUTTON, Laura L. SWEIGART, dated June 23, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of December, A.D. 2008.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

By:

David S. Hewett

Gregory E. Murray Assistant Secretary

David S. Hewett

Vice President

State of Maryland } ss:
City of Baltimore }

**FOR YOUR PROTECTION,
LOOK FOR THE ZURICH WATERMARK**

On this 17th day of December, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 8th day of June, 2009.



Assistant Secretary

Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

Bond No. 8940633

RIDER

To be attached to and form a part of Erosion and Sedimentation Control Bond No. 8940633 dated the 8th day of June, 2009, issued by the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, as Surety, on behalf of Monticello Woods Active Adult, LLC, as Principal, in the penal sum of One Hundred Twenty-nine Thousand and no cents Dollars (\$129,000.00), and in favor of the County of James City, Virginia

In consideration of the premium charged for the attached bond, it is hereby agreed that the attached bond be amended as follows:

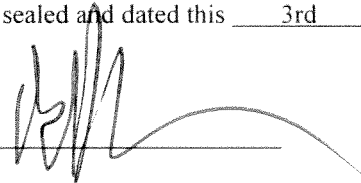
Decrease bond limit to One Hundred Thousand dollars and no cents (\$100,000.00).

Provided, However, that the attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified and further that the liability of the Surety under the attached bond and the attached bond as amended by this rider shall not be cumulative.

This rider shall become effective as of the 3rd day of May, 2011.

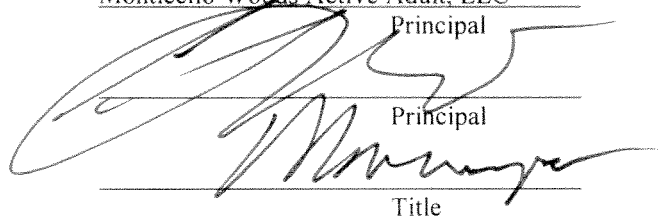
Signed, sealed and dated this 3rd day of May, 2011.

ATTEST:



Monticello Woods Active Adult, LLC

Principal



Principal

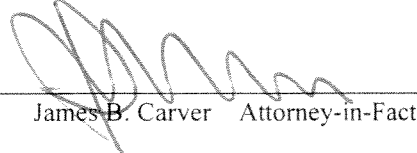
Title

ACCEPTED:



FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By:



James B. Carver Attorney-in-Fact

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **S. E. WADDILL, III, Carlton L. GILL, JR., Judith S. CANTWELL, R. Gilliam FRY, IV, James B. CARVER, Donna M. SUTTON and Laura L. SWEIGART**, all of Newport News, Virginia, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Robert G. FRY, III, S. E. WADDILL, III, Carlton L. GILL, JR., Judith S. CANTWELL, R. Gilliam FRY, IV, James B. CARVER, Donna M. SUTTON, Laura L. SWEIGART, dated December 17, 2008.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of December, A.D. 2011.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

By:

Frank E. Martin Jr.

Gregory E. Murray Assistant Secretary

Frank E. Martin Jr.

Vice President

State of Maryland } ss:
City of Baltimore }

**FOR YOUR PROTECTION,
LOOK FOR THE ZURICH WATERMARK**

On this 15th day of December, A.D. 2011, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2015

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE


I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 3rd day of May, 2011.



Assistant Secretary